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ABSTRACT

In recent years, considerable attention has been focused on freedom of the press, censorship, and students' rights because of litigation involving the issue of ownership where high school and college newspapers are concerned. Those favoring protection of student publications under the First Amendment argue that the model of hierarchical organization applicable to commercial newspapers does not fit student publications. The school (college, university) is not the publisher of the student newspaper, and the university president is not the owner. In order for the school to be granted control of student publications in the same way that owners of commercial publications control newspaper content, the schools would have to finance the paper and be clearly liable for a publication's torts. The solution to the ownership controversy lies in applying the academic freedom concept to student journalists so that student publications are free to publish what they wish within the bounds of libel and obscenity, and are subject to the review of their peers, their audience, and the more general community. (RB)

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THE COLLEGE PRESIDENT IS NOT EUGENE C. PULLIAM: STUDENT PUBLICATIONS IN A NEW LIGHT

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THE COLLEGE PRESIDENT IS NOT EUGENE C. PULLIAM: STUDENT PUBLICATIONS IN A NEW LIGHT

"There is no question about the right of (college) students to publish everything they wish, subject to the usual laws of libel. They can start a newspaper and take advantage of the freedom of the press guarantees whenever they want to. But freedom of the press does not mean they have the right to use the newspaper owned by the university and financed by dues collected by the university. ... The papers are free to publish what their owners want, but the owners are not the students who work on them.

"...Is a student editor's right under the First Amendment greater than, say, my right (as editor of The Arizona Republic)? (Can) the student editor... publish what he wants, within the bounds of decency, without regard to what the adviser thinks(?) Do you think the First Amendment gives me that right in respect to my publisher?...(Students) cannot claim, any more than I can, the right to publish something in another person's newspaper."[1] --Frederic S. Marquardt, editor, The Arizona Republic (Eugene C. Pulliam, owner and publisher).

Mr. Marquardt is not alone in his belief that schools "own" and "publish" college student newspapers and periodicals. Attorneys for the University of Mississippi, in appealing to the Supreme Court a case involving attempted censorship of a student literary magazine containing "four letter words," presented as one question for consideration the power of a state university to "exercise reasonable restraint akin to the publisher of a private magazine."[2] Similarly, a recent survey of 700 state colleges[3] confirmed the results of a ten-year-old survey of major college daily papers.[4] In each case, the majority indicated that the school or a school official was the newspaper's publisher.

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Many college administrators and journalism educators raise no question about this. One school official has stated, "College publications exist at the will of the institution's governing board."[5] Edmund C. Arnold of Syracuse University's School of Public Communications contends the college cannot "censor" a student paper any more than "Jack Knight can censor the Miami Herald," because the school publishes and controls the paper; thus, it is not censorship, but a publisher invoking its rights.[6] John Merrill of the University of Missouri's School of Journalism not only believes the university is publisher, but contends that problems of friction between publisher and staff will be considerably eased if a frank statement were made as to who actually is publisher and has final authority.[7]

However, a valid analogy cannot be drawn between the hierarchical organization of commercial newspapers and magazines and that of student publications on public college and university campuses. Particularly, it is not true that the school--as an amorphous entity, or through the board of trustees or the president--is "publisher" of the student newspaper, neither in a legal sense nor in the way Mr. Marquardt sees Mr. Pulliam as his publisher.

Analyzing this contention must begin with defining the word "publisher." As a term of art, it has little standing in law. The few occasions "publisher" has been judicially defined have concerned questions of who could properly sign an affidavit of publication of legal notices.[8] In only one of the many recent cases involving student publications has a court squarely faced the issue.

In the University of Mississippi case previously noted,[9] the University attempted to equate itself with a private publisher and arbitrarily imposed editorial decisions on the student editors of a literary magazine. The Fifth

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Circuit Court of Appeals refused to accept the school's stance on several grounds. First, said the court, the University's financial connection with the periodical was "tenuous" and involved no special appropriation, even though the magazine, while intended to be "self-supporting," received a grant from the student government, and the English department both supplied a faculty advisor and agreed to make up any financial losses. Second, a statement in the magazine that it was published by the students with the advice of the English department was not considered sufficient to give private publisher status to the University, even taken together with the financial arrangements. Finally, the court saw the school as an arm of the state, which it said, "will always distinguish it from the purely private publisher as far as censorship rights are concerned,"[10]

Since courts, whether in cases involving student publications or not, have not clearly defined "publisher," it may be heuristic to utilize the definition used by the commercial press, which entails at least three elements: 1) control of a publication's contents, 2) control of a publication's finances, and 3) tort liability for a publication's mistakes, e.g., invasions of privacy, printing of actionable libel. In each case, a comparison with a private publisher shows that a university's powers are not analogous with a publisher of a commerical newspaper or periodical.

CONTROL OF CONTENT

In terms of content, it can be stated unequivocally: College students enjoy the same First Amendment protections from government interference with their freedom of expression as do other citizens; they do not relinquish those rights as a condition precedent to school attendance. Courts have held that the guarantees contained in the First Amendment apply equally to all,

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including students. The Fourteenth Amendment applies to all state educational institutions--which operate under the color of state law--and protects the rights of students against unreasonable rules and regulations, including restrictions against freedom of the press.[11] The Supreme Court has held that "students and teachers do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[12] No case since Dickey[13] has gone against this tide of legal opinion.

Dickey involved the disciplining of an Alabama state college student editor who had printed the word "Censored" in place of an editorial his advisor and the school president ordered him not to run. Deciding that the rule not allowing criticism of state officials, including the governor and legislators, was "unreasonable," and was not relevant to the "maintenance of order and discipline" on campus, a federal district court would not condone barring Dickey from school attendance.[14]

In Massachusetts, a student newspaper editor's attempt to print material written by Eldridge Cleavor prompted the college president to establish a screening board to approve all copy before publication. Ruling in Antonelli v. Hammond,[15] a federal district court said prior restraint would be permissible only under the most unusual circumstances and then only with carefully drawn procedural safeguards. However, the court emphasized that newspaper censorship "in any form seems essentially incompatible with freedom of the press."[16]

Even when the student press printed attacks on organized religion (for example, an article headlined, "The Catholic Church--Cancer of Society"), a New York appeals court ruled that campus newspapers are intended to be a forum for the exchange of ideas ("not necessarily good ones"), and that school officials

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could not abridge students' First Amendment rights in this area.[17]

These and other recent cases emphasize that a college paper cannot be suppressed because school officials disagree with its contents,[18] nor can censorship of protected expression be imposed by suspending the editor[19] or requiring prior approval of material.[20]

One case may be seen as leaving open the question of a school's editorial authority regarding a laboratory paper, one where students have specifically been told their work will be reviewed and edited by faculty members or professional journalists.[21] Later cases, however, seem to preclude allowing increased censorship powers simply because students have been forewarned.

How does this compare with the professional press? Could a publisher stop distribution of a certain edition? Could he fire an editor? Could he ask to approve all copy prior to publication? In all cases, the answer is "yes."

Of course, student editors and writers do not have total freedom. As with other journalists, they are subject to state and federal laws concerning obscenity and libel. Additionally, professional journalists must heed Brandenburg's caution about crossing the critical line between mere advocacy and advocacy "directed to inciting or producing imminent lawless action."[22] The courts have dealt with some college cases by translating this version of the "clear and present danger" concept into the campus situation. In essence, they say that on the college level, for regulations inhibiting students' freedom of expression to be constitutionally valid, the students' interest in free expression must be outweighed by the university's interest in protecting its educational process.[23] Courts define this by determining whether administrators can prove that the expression "materially and substantially disrupted school discipline and procedure."[24]

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They have extended this concept to include whether administrators could reasonably forecast such disruption.[25] The disruption must seriously threaten the educational process before it will be accepted as a valid reason for abridging students' First Amendment rights. Justice Powell has gone so far as to hold that "whether the students did in fact advocate a philosophy of 'destruction' (is) immaterial."[26]

Some believe the courts have not extended the concept of "nonmalicious reporting" to college journalists,[27] primarily because of the varying levels of maturity found in student reporters and editors. However, this does not detract from the fact that public school administrators and faculty members, as arms of the state, cannot abridge college students' freedom of expression except in the most extreme circumstances. The Supreme Court has recently affirmed this in the Papish case,[28] involving an underground paper distributed on the University of Missouri campus which contained material one Justice characterized as "lewd and obscene,"[29] but which a majority of the Court found to be protected expression.

If the college cannot excise copy because "the state is not necessarily the unrestrained master of what it creates and fosters,"[30] as the Antonelli court put it in reference to a college newspaper, can the school also not demand inclusion of material? The Fourth Circuit in Joyner v. Whiting, deciding the difficult question of a state-funded student newspaper advocating segregation yet still being protected by the First Amendment, noted that student freedom of expression does not necessarily grant total autonomy to a student editor. Without specifically mentioning access theory,[31] the court contended that a student paper should be an open forum, available to all ideas, enhancing free speech. But the court shied away from stating how far a "fairness doctrine for the

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college" press must go.[32] One observer sees the court's decision as prohibiting active censorship, but perhaps permitting "passive regulation" that would open access to the paper.[33]

Again, how does this compare with the commercial press? A publisher can arbitrarily decide what is and is not to be printed. No reporter on a commercial paper can successfully claim his First Amendment rights are violated because a story he wrote is not printed. The situation differs on the college level where school official can censor protected expression in student publications.

This raises the question of whether it is constitutionally valid for a student editor to censor copy. In a case involving a law review published under the auspices of a state university law school, a district court judge ruled that a student editor's decision not to print an article was within his prerogative and did not violate the non-student author's First Amendment rights.[34]

In Lee v. Board of Regents,[35] a student publications board ruling that certain editorial advertisements could not run in the school newspaper was held invalid. However, both the district court and the Seventh Circuit saw the board's power as stemming from the state. It was the state, then, as opposed to a student editor, that could not close the campus newspaper to editorial advertisements. A private publisher can reject such ads, as the Seventh Circuit ruled in upholding the refusal of Chicago papers to print Amalgamated Clothing Workers' pleas to boycott certain department stores.[36]

Thus, the comparision between a university and a private publisher regarding control of content shows significant differences. Is there a closer comparison when considering the factor on which many base their contention that the university is publisher of student newspapers and periodicals, ie., financial control?

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CONTROL OF FINANCES

The hierarchical organization of a student newspaper may be one of four kinds: 1) a system in which professional journalists, or faculty members who have been professionals, occupy key editorial positions; 2) a system in which the school newspaper and periodicals are under a board of publications; 3) a system built around an advisor who has varying degrees of control over the newspaper in different institutions; and 4) an independently incorporated board of directors. Even for most of the last variety, all these involve the payments of monies from the school to the newspaper, either through student activity fees, a subsidy payment, subscription fees, institutional advertising, or a combination of these.

But is this in fact "financial control"? In the 1970 Antonelli case, a federal district court judge held that financial aid given a college newspaper did not carry with it concomitant censorship powers over the paper's contents nor allow withdrawal of funds during midyear because of a disagreement with those contents. The court said, "We are well beyond the belief that any manner of state regulation is permissible simply because it involves an activity which is a part of the university structure and is financed with funds controlled by the administration."[37] A similar ruling occurred in a case involving a student magazine at the University of Maryland, on the cover of which was a picture of a burning American flag. Referring to a state anti-desecration law, the court said, "The fact that the University is involved in the financing of (the magazine) does not permit its officials to apply a statute unconstitutionally."[38]

The ruling in Joyner, decided last year by the Fourth Circuit, was consistent with Antonelli. The school president contended that segregationist statements made by the student paper on the previously all-black campus violated the

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school's responsibilities under the Fourteenth Amendment and the Civil Rights Act of 1964. In order to avoid the situation of supporting or withdrawing support from future student papers because of their editorial policies, he permanently stopped financial support of all student newspapers on the campus. The court refused to accept this reasoning, holding that the president had no power to end financial support of the paper, first, since he had done so because of its contents, second, since there was no proof that the publication incited harassment, violence, or interference with white students, and third and importantly, that the editor had not rejected articles opposed to his point of view.

Courts have emphasized that colleges need not establish a campus newspaper; they are under no affirmative obligation to do so.[39] If one is established, it may be permanently discontinued, but only for reasons not connected with First Amendment considerations. It is this latter point that further separates universities from private publishers. Additionally, they are separated by the fact that supplying financial aid does not give university officials power to place limitations on the use of the very publications they have established.[40]

There is one possible exception to the general rule that financial support cannot be withdrawn because of a publication's contents. It has been observed that if newspaper editorials such as those in the Joyner case did in fact cause a major withdrawal of funds to the college--for instance, federal funds withheld because of the segregationist stance taken by the school paper--it might be proved that such constituted "material and substantial" interference with educational procedures, a valid reason for disciplining student

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editors and, perhaps, ending financial support to the publications.[41]

RESPONSIBILITY FOR TORTS

In addition to content and financial control, the third element in the definition of a publisher is tort liability for libelous statements or for invasions of privacy by student publications. Without doubt, the publisher of a commercial newspaper or periodical is responsible for civil wrongs committed in the publication by his employees. A well-reasoned analysis of whether a college is so responsible appeared recently in the Michigan Law Review.[42]

Assuming a plaintiff who believes he has been libeled in a college student publication can avoid the pitfalls of charitable and sovereign immunity, the doctrine that one may not sue charitable organizations nor the state for civil wrongs committed by their employees, the Michigan author sees two legal concepts under which a college might be held liable for student publications' torts. One is that of vicarious liability, the other that of communication liability.

Vicarious liability (also known as respondeat superior or imputed liability) holds one person responsible for the torts of another because of their relationship; that is, that the one acted with the actual or apparent authority of the other.[43] In terms of a campus newspaper, it might be shown that even a student who acted with actual malice in writing a story was doing so within the authority of the university, since it would appear to readers that the writer was acting in accordance with his usual practices. Surely routine stories, even those with factual errors but written in good faith under deadline pressure, would seem to be under the authority of the school which created and sustains the publication.

In addition to the authority question, for the vicarious liability concept

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to be in effect, an agency relationship between the college and the newspaper must be shown. The Michigan Law Review note cites a definition in the Restatements[44] to establish a three-element test for agency: consent, benefit, and control.

Most school newspapers enjoy official student status, which shows consent. Even in the absence of such status, sufficient connection can usually be shown to indicate the publication exists with the school's consent. The matter of benefits can be either financial, even those most school papers do not make a profit; educational, in terms of benefiting the students who work on the paper; or informational, in that the paper serves as a conduit of campus news to the students, faculty, and staff.

Control, the third element of the agency question, once specifically meant physical control of the agent by the principal or master.[45] Today, courts hold that control of management and policy decisions is sufficient.[46] As already noted, schools generally cannot control the content of student publications. Also, while some financial control is present, it is certainly not to the same degree as that of a private publisher. The control element, then, is tenuous. Additionally, with respect to whether a school should be held liable for a student publication's torts, the Supreme Court has ruled that a broadcasting station, not being able to control the content of a political candidate's speech, enjoys immunity from liability for defamation charges arising from that presentation.[47] No court has yet drawn an analogy to a university's lack of control over student publications' contents, but one certainly would be valid. That is, schools that do not attempt to exercise editorial control should not be held liable for defamatory publications.

The second legal doctrine, communications liability, concerns the culpability of those who aid in furthering defamatory publications, above and beyond the

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writer himself.[48] Various forms of financial assistance provided student publications by a school may be seen as aiding the communication process. In fact, one court has seen university culpability on the grounds of communications liability even where vicarious liability was not present.[49] The Syracuse student newspaper, several people connected with it, and the University sued in a libel action for nearly $1 million. Arguing that it did not control the paper and that, therefore, the respondeat superior doctrine did not apply, the University asked for dismissal from the suit. The court held that while vicarious liability might not be applicable, communication liability was, on the basis that, "He who furnishes the means for convenient circulation, knowing, or having reasonable cause to believe, that it is to be used for (a defamatory publication) . . . is guilty of aiding in the publication and becomes the instrument of the libeler" (quoting an 1897 New York case[50]). The Syracuse case was dismissed at the plaintiff's behest, but the court's contention that the University was involved is of interest, although it is seemingly the only such holding on record.

In the face of the court's comment, however, the Michigan Law Review article indicates that there are factors which mitigate against the development of communication liability.[51] First, since a university should not actively participate in student publications beyond simply furnishing space and supplies, it is not clear how much involvement is necessary to make the school culpable. Second, courts have dismissed as defendants in libel actions those who were innocent purveyors of the defamatory communication and who could not have been expected to know of the contents. Cases have indicated that such is the role of a college should play in regard to student newspapers and periodicals. Finally, actual malice on the school's part per the New York Times rule would be most difficult to prove.

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On a practical level, a recent survey study has found only 19 libel cases filed against college publications in the last 30 years.[52] In only one was the plaintiff victorious, and there for material in an advertisement, not in a student-written piece. Many of the suits were dropped or settled out of court. In another case, Langford v. Vanderbilt,[53] the University contended it had no control over the newspaper's editorial content, and was therefore not culpable under respondeat superior. Finding the publications was privileged, however, the court failed to reach that question. In a recent case involving Rutgers University,[54] a similar outcome prevailed.

ACADEMIC FREEDOM MODEL

The model of hierarchical organization applicable to commercial newspapers, then, does not fit student publications. The university is not the publisher; its president is not Eugene C. Pulliam. The school does not control content or finances, nor is it clearly liable for a publication's torts. It is necessary to discard this concept, to stop looking for a publisher who does not exist, and turn elsewhere for a realistic, useful, acceptable model of student publications on public college campuses.

Perhaps the answer is within institutions themselves--the concept of academic freedom.[55] This system is based on the right of faculty members to teach and perform research independently, without interference from college or government officials or other professors. Also inherent is the right of tenure, under which faculty members can be terminated only for specific, serious wrongs, protecting them from firings which are capricious or based on inadequate reasons.

Working on the basic proposition that the government cannot abridge protected expression, and that college officials are arms of the state, student journalists

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should be protected under the academic freedom concept. As with faculty members, they should be able to work without untoward interference and should not be removed from their positions as journalists or students without a conclusive showing of material and substantial disruption of educational processes. The courts have increasingly recognized these freedoms, though as First Amendment scholar Thomas Emerson has pointed out, only within First Amendment bounds, not establishing a constitutional doctrine of academic freedom.[56]

Emerson's argument for such a constitutional doctrine is also a firm basis for why academic freedom is a viable model for student publications. First, the basic principles for the concept have been laid around a major societal institution, education. Second, a substantial body of case law exists applying general principles to specific instances--here, attempts to censor or punish student journalists. Third, the fundamental principles are reducible to judicial rules and doctrine, allowing judicial review.[57]

In fact, the Joyner case could be viewed in this light. In the face of a national policy against segregation, particularly segregated educational facilities, the Fourth Circuit held for the freedom of students to editorialize in favor of an all-black college. While couching its decision in First Amendment terms, the court surely held for academic freedom.[58]

It is important to note the court did not hold for unlimited dictatorial powers for the student editors. They are still subject to evenly applied state and federal laws; they must still answer to the student body; the newspaper's contents are subject to criticism from readers. But this is far different than a college administrator, who operates under the color of state laws, exercising censorial powers over student publications.

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Applying the academic freedom concept to student journalists will confirm that they are free to publish what they will within the bounds of libel and obscenity--and are subject to the review of their peers, their audience, as well as the more general community as sanctioning influences.

The academic freedom model may be quite ideal, even heroic, but it avoids the hierarchical models which are inevitably repressive. In analyzing an academic situation, an academic model seems most appropriate. The traditional model has led only to confrontation and confusion. College administrators are not publishers of student newspapers or periodicals, not as the word is used by the private, commercial press, nor seemingly in the eyes of the judiciary. The courts have adamantly stated that school officials do not have the powers of private publishers. It is time to stop using that concept and to start viewing student publications in a new light.

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NOTES

[1]Based on personal correspondence between Frederic S. Marquardt, editor of The Arizona Republic, and the writer Dec. 28, 1973, and Jan. 9, 1974.

[2]Bazaar v. Fortune, 476 F.2d 570 (1973), cert. denied, 42 U.S.L.W. 3632 (1974) (see 42 U.S.L.W. 3504 (1974)).

[3]Survey conducted for National Council of College Publication Advisers by Department of Journalism, Ball State University, 1973.

[4]Kenneth S. Devol, "Editorial Policies Governing College Dailies," 43 Journalism Quarterly 345 (1966).

[5]Clarence J. Bakkan, The Legal Basis for College Student Personnel Work 38 (1961).

[6]Edmund C. Arnold, "The Campus Press," 55 The Quill 13 (September 1967).

[7]Herman A. Estrin and Arthur M. Sanderson, Freedom and Censorship of the College Press 111 (1966).

[8]35A Words and Phrases 160-61 (1970).

[9]Bazaar v. Fortune, 476 F.2d 570.

[10]Id. at 574.

[11]See Robert Trager, "Freedom of the Press in College and High School," 35 Albany Law Review 161 (1971); Donald T. Kramer, "Validity, Under Federal Constitution, of Public School or College Regulation of Student Newspapers, Magazines or Other Publications--Federal Cases," 16 A.L.R.Fed. 182 (1973).

[12]Tinker v. Des Moines Independent School District, 393 U.S. 503, 506 (1969).

[13]Dickey v. Alabama State Board of Education 273 F. Supp. 613 (M.D. Ala. 1967), dismissed as moot sub. nom. Troy State Univ. v. Dickey 402 F.2d 515 (5th Cir. 1968)

[14]Id. at 617-18.

[15]308 F. Supp. 1329 (D. Mass. 1970).

[16]Id. at 1336.

[17]Panarella v. Birenbaum, 343 N.Y.S.2d 333, 338 (1972).

[18]Panarella v. Birenbaum, 343 N.Y.S.2d 333; Joyner v. Whiting, 477 F.2d 456 (4th Cir 1973); Channing Club v. Board of Regents, 317 F. Supp. 688 (N.D. Tex. 1970).

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[19]Dickey v. Alabama State Board, 273 F. Supp. 613; Scoville v. Joliet Township High School District 204, 425 F.2d 10 (7th Cir. 1970), cert. denied, 400 U.S. 826 (1970); Sullivan v. Houston Independent School District, 307 F. Supp. 1328 (S.D. Tex. 1969).

[20]Trujillo v. Love, 322 F. Supp. 1266 (D. Colo. 1971); Panarella v. Birenbaum, 343 N.Y.S.2d 333; Antonelli v. Hammond, 308 F. Supp. 1329 (D. Mass. 1970).

[21]Trujillo v. Love, 322 F. Supp. 1266.

[22]Brandenburg v. Ohio, 395 U.S. 444, 447 (1968).

[23]Dickey v. Alabama State Board, 273 F. Supp. 613; Antonelli v. Hammond, 308 F. Supp. 1329; Bazaar v. Fortune, 476 F.2d 570; Panarella v. Birenbaum, 343 N.Y.S.2d 333.

[24]Tinker v. Des Moines, 393 U.S. at 509.

[25]Scoville v. Joliet, 425 F.2d 10.

[26]Healy v. James, 408 U.S. 169 (1972) (emphasis added).

[27]"Constitutional Law--Freedom of Speech--Withdrawal of Funds from College Newspaper Advocating Segregationist Policy Deemed Violative of First and Fourteenth Amendments," 8 University of Richmond Law Review 297, 300 (1974); Joyner v. Whiting, 477 F.2d at 462.

[28]Papish v. Board of Curators, 93 S.Ct. 1197 (1973).

[29]Id. at 1202.

[30]Antonelli v. Hammond, 308 F. Supp. at 1337.

[31]Jerome A. Barron, Freedom of the Press for Whom? The Right of Access to the Mass Media (1973).

[32]Joyner v. Whiting, 477 F.2d at 462.

[33]"Constitutional Law--Freedom of the Student Press--Permanent Withdrawal of Funds from a Student Newspaper to Quiet Racist Views Violates the First Amendment," 51 Texas Law Review 1011, 1015 (1973).

[34]Avins v. Rutgers University, 385 F.2d 151 (3d Cir. 1967).

[35]441 F. 2d 1257 (7th Cir. 1971).

[36]Chicago Joint Board, Amalgamated Clothing Workers v. Chicago Tribune Co., 435 F.2d 470 (7th Cir. 1970).

[37]Antonelli v. Hammond, 308 F. Supp. at 1331.

[38]Korn v. Elkins, 317 F. Supp. 138, 143 (D. Md. 1970).

[39]Joyner v. Whiting, 477 F.2d at 460; see also Dickey v. Alabama State Board, 273 F. Supp. at 618.

[40]Trujillo v. Love, 322 F. Supp. 1266.

[41]"Constitutional Law--Freedom of the Press--Withdrawal of Funding to Campus Newspaper," 1973 Wisconsin Law Review 1179, 1190-91 (1973).

[42]"Tort Liability of a University for Libelous Material in Student Publications," 71 Michigan Law Review 1060 (1973).

[43]William Prosser, Law of Torts, 4th ed. 458-59 (1971).

[44]Restatement (Second) of Agency, 1 (1957).

[45]Singer Manufacturing Co. v. Rahn, 132 U.S. 518 (1889).

[46]E.g., Bing v. Thunig, 143 N.E.2d 3 (Mass. 1957).

[47]Farmer's Educational and Cooperative Union of America v. WDAY, Inc., 360 U.S. 525 (1959).

[48]F. Harper and F. James, The Law of Torts, Vol. 1 390-94 (1956), cited in "Tort Liability," supra, note 42.

[49]LaBarge v. Daily Orange, Civil No. 70-6597 (N.Y. Sup. Ct., 5th Dist., April 8, 1972) (dismissed for failure to prosecute), cited in "Tort Liability," supra, note 42.

[50]Youmans v. [illegible], 47 N.E. 265, 266 (1897), cited in "Tort Liability," supra, note 42.

[51]"Tort Liability," supra, note 42, at 1084-85.

[52]Barry L. Standley, "Libel in College and University Student Publications: Its Frequency and Character," unpublished Masters thesis, Ball State University, Muncie, Ind., 1972.

[53]318 S.W.2d 568 (Tenn. 1968).

[54]Scelfo v. Rutgers University, 282 A.2d 445 (N.J. 1971).

[55]Generally, see Thomas I. Emerson, The System of Freedom of Expression 593-626 (1970).

[56]Id. at 616.

[57]Id. at 612.

[58]"Constitutional Law--Freedom of Speech," supra, note 21, at 301.